

THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALEXIS WAGNER, an individual,

Plaintiff,

vs.

HASELWOOD MOTOR COMPANY, a
Washington company, and THOMAS KIM,
an individual and the marital community
comprised thereof,

Defendants.

No. 3:23-cv-05983-DGE

JOINT AGREEMENT
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND ORDER

NOTE ON MOTION CALENDAR:
September 12, 2024

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible. This

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1 agreement is intended to assist the parties in identifying relevant, responsive information
2 that has been stored electronically and is proportional to the needs of the case. The
3 agreement does not supplant the parties' obligations to comply with Fed. R. Civ. P. 34.

4 **B. ESI Disclosures**

5 Within 7 days of entry of this Order, or at a later time if agreed to by the parties,
6 each party shall disclose:

7 1. Custodians. The custodians most likely to have discoverable ESI in their
8 possession, custody, or control. The custodians shall be identified by name, title,
9 connection to the instant litigation, and the type of the information under the custodian's
10 control (e.g., emails, text messages, electronically stored files).

11 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g.,
12 shared drives, servers), if any, likely to contain discoverable ESI.

13 3. Third-Party Data Sources. A list of third-party data sources, if any, likely
14 to contain discoverable ESI (e.g., third-party email providers, mobile device providers,
15 cloud storage) and, for each such source, the extent to which a party is (or is not) able to
16 preserve information stored in the third-party data source.

17 4. Inaccessible Data. A list of data sources, if any, likely to contain
18 discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to
19 specifically identify the data source) that a party asserts is not reasonably accessible under
20 Fed. R. Civ. P. 26(b)(2)(B).

21 **C. ESI Discovery Procedures**

22 1. On-site inspection of electronic media. Such an inspection shall not be
23 required absent a demonstration by the requesting party of specific need and good cause
24 or by agreement of the parties.

1 2. Search methodology. The parties shall timely confer to attempt to reach
2 agreement on appropriate search terms and queries, file type and date restrictions, data
3 sources (including custodians), and other appropriate computer- or technology-aided
4 methodologies, before any such effort is undertaken. The parties shall continue to
5 cooperate in revising the appropriateness of the search methodology.

6 (a) Prior to running searches:

7 (i) The producing party shall disclose the data sources
8 (including custodians), search terms and queries, any file type and date restrictions, and
9 any other methodology that it proposes to use to locate ESI likely to contain responsive
10 and discoverable information. The producing party may provide unique hit counts for each
11 search query, and such disclosure will not constitute a waiver of any privilege, including
12 attorney-client privilege or work product privilege.

13 (ii) After disclosure, the parties will engage in a meet and confer
14 process regarding additional terms sought by the non-producing party.

15 (iii) The following provisions apply to search terms / queries of
16 the requesting party. Focused terms and queries should be employed; broad terms or
17 queries, such as product and company names, generally should be avoided. A conjunctive
18 combination of multiple words or phrases (e.g., “computer” and “system”) narrows the
19 search and shall count as a single search term. A disjunctive combination of multiple words
20 or phrases (e.g., “computer” or “system”) broadens the search, and thus each word or
21 phrase shall count as a separate search term unless they are variants of the same word. The
22 producing party may identify each search term or query returning overbroad results
23 demonstrating the overbroad results and within 10 days after such demonstration, provide
24 a counter proposal correcting the overbroad search or query. If no counterproposal is
25 provided in the relevant 10-day time frame, the term is forfeited.

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2 (b) No producing party will be required to run more than three custodial
3 data sources and two non-custodial data sources on which to run searches. The receiving
4 party may select the relevant custodian and data sources for which the searches will be run.

5 3. Format.

6 (a) ESI will be produced to the requesting party with searchable text,
7 in a format to be decided between the parties. Acceptable formats include, but are not
8 limited to, native files, multi-page TIFFs (with a companion OCR or extracted text file),
9 single-page TIFFs (only with load files for e-discovery software that includes metadata
10 fields identifying natural document breaks and also includes companion OCR and/or
11 extracted text files), and searchable PDF.

12 (b) Unless otherwise agreed to by the parties, files that are not easily
13 converted to image format, such as spreadsheet, database, and drawing files, will be
14 produced in native format.

15 (c) Each document image file shall be named with a unique number
16 (“Bates Number”). File names should not be more than twenty (20) characters long or
17 contain spaces. When a text-searchable image file is produced, the producing party must
18 preserve the integrity of the underlying ESI, *i.e.*, the original formatting, the metadata (as
19 noted below) and, where applicable, the revision history.

20 (d) If a document is more than one page, the unitization of the document
21 and any attachments and/or affixed notes shall be maintained as they existed in the original
22 document.

23 (e) The full text of each electronic document shall be extracted
24 (“Extracted Text”) and produced in a text file. The Extracted Text shall be provided in
25 searchable ASCII text format (or Unicode text format if the text is in a foreign language)
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1 and shall be named with a unique Bates Number (e.g., the unique Bates Number of the
2 first page of the corresponding production version of the document followed by its file
3 extension).

4 4. De-duplication. The parties may de-duplicate their ESI production across
5 custodial and non-custodial data sources after disclosure to the requesting party, and the
6 duplicate custodian information removed during the de-duplication process tracked in a
7 duplicate/other custodian field in the database load file.

8 5. Email Threading. The parties may use analytics technology to identify
9 email threads and need only produce the unique most inclusive copy and related family
10 members and may exclude lesser inclusive copies. Upon reasonable request, the producing
11 party will produce a less inclusive copy.

12 6. Metadata fields. If the requesting party seeks metadata, the parties agree
13 that only the following metadata fields need be produced, and only to the extent it is
14 reasonably accessible and nonprivileged: document type; custodian and duplicate
15 custodians (or storage location if no custodian); author/from; recipient/to, cc and bcc;
16 title/subject; email subject; file name; file size; file extension; original file path; date and
17 time created, sent, modified and/or received; and hash value. The list of metadata type is
18 intended to be flexible and may be changed by agreement of the parties, particularly in
19 light of advances and changes in technology, vendor, and business practices.

20 7. Hard-Copy Documents. If the parties elect to produce hard-copy documents
21 in an electronic format, the production of hard-copy documents will include a cross-
22 reference file that indicates document breaks and sets forth the custodian or
23 custodian/location associated with each produced document. Hard-copy documents will
24 be scanned using Optical Character Recognition technology and searchable ASCII text
25 files will be produced (or Unicode text format if the text is in a foreign language), unless
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1 the producing party can show that the cost would outweigh the usefulness of scanning (for
2 example, when the condition of the paper is not conducive to scanning and will not result
3 in accurate or reasonably useable/searchable ESI). Each file will be named with a unique
4 Bates Number (e.g., the unique Bates Number of the first page of the corresponding
5 production version of the document followed by its file extension).

6 **D. Preservation of ESI**

7 The parties acknowledge that they have a common law obligation, as expressed in
8 Fed. R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable
9 information in the party's possession, custody, or control. With respect to preservation of
10 ESI, the parties agree as follows:

11 1. Absent a showing of good cause by the requesting party, the parties shall
12 not be required to modify the procedures used by them in the ordinary course of business
13 to back-up and archive data; provided, however, that the parties shall preserve all
14 discoverable ESI in their possession, custody, or control.

15 2. The parties will supplement their disclosures in accordance with Fed. R.
16 Civ. P. 26(e) with discoverable ESI responsive to a particular discovery request or
17 mandatory disclosure where that data is created after a disclosure or response is made
18 (unless excluded under Sections (D)(3) or (E)(1)-(2)).

19 3. Absent a showing of good cause by the requesting party, the following
20 categories of ESI need not be preserved:

21 (a) Deleted, slack, fragmented, or other data only accessible
22 by forensics.

23 (b) Random access memory (RAM), temporary files, or
24 other ephemeral data that are difficult to preserve without disabling the
operating system.

25 (c) On-line access data such as temporary internet files,
26 history, cache, cookies, and the like.

(d) Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).

(e) Back-up data that are duplicative of data that are more accessible elsewhere.

(f) Server, system or network logs.

(g) Data remaining from systems no longer in use that is unintelligible on the systems in use.

(h) Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that a copy of all such electronic data is automatically saved in real time elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

E. Privilege

1. A producing party shall create a privilege log of all documents fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or excepted by this Agreement and Order. Privilege logs shall include a unique identification number for each document and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata provide insufficient information for the purpose of evaluating the privilege claim asserted, the producing party shall include such additional information as required by the Federal Rules of Civil Procedure.

2. Redactions need not be logged so long as the basis for the redaction is clear on the redacted document.

3. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

4. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

5. Pursuant to Fed. R. Evid. 502(d), the production of any documents, ESI or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

IT IS SO AGREED, THROUGH COUNSEL OF RECORD:

DATED: September 12, 2024

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17 **ORDER**

18 Based on the foregoing, IT IS SO ORDERED.

19 DATED this 12th day of September 2024.

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The Honorable David G. Estudillo
22 UNITED STATES DISTRICT CHIEF
23 JUDGE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date written below, I caused a true and correct copy of the foregoing document to be served on the following attorneys, via the method(s) indicated:

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Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 12th day of September, 2024.

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